

BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.162.415 general	)	PROPOSED AMENDMENT,
requirements, 24.162.420 fee	)	ADOPTION, AND REPEAL
schedule, 24.162.502 military training	)	
or experience, 24.162.504	)	
examinations, 24.162.510 reciprocity	)	
licenses, 24.162.515 inactive license,	)	
and 24.162.2105 continuing	)	
education, the adoption of NEW	)	
RULE I nonroutine applications, and	)	
the repeal of ARM 24.162.401	)	
quorum, 24.162.403 submittals and	)	
requests, 24.162.407 record of	)	
minutes and hearings, 24.162.408	)	
application denial, 24.162.409	)	
hearings or proceedings, 24.162.509	)	
reinstatement, and 24.162.2101	)	
renewals	)	

TO: All Concerned Persons

1. On August 15, 2016, at 10:00 a.m., a public hearing will be held in the Large Conference Room, 4th Floor, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing Home Administrators (board) no later than 5:00 p.m., on August 8, 2016, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Nursing Home Administrators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdnha@mt.gov.

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.162.415 GENERAL REQUIREMENTS (1) The license, together with evidence of current validation, shall be conspicuously displayed within the facility served by the licensee, and the ~~holder of a license~~ licensee shall have evidence of current validation in ~~his~~ the licensee's possession at all times.

(2) Each ~~person who holds a license or permit~~ licensee shall:

(a) file his the licensee's current mailing address with the board; and  
(b) notify the board office in writing or electronically of any and all changes which occur within ten days of such the address change.

AUTH: ~~37-9-201~~ 37-9-203, MCA  
IMP: 37-9-203, ~~37-9-304~~, MCA

REASON: The board determined it is reasonably necessary to amend this rule to update to current board processes, including electronic communications, and eliminate gender-specific references. Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.162.420 FEE SCHEDULE (1) Applicant and licensee fees are as follows:

(a) application fee <u>by examination</u>	\$225
(b) application by examination and temporary license	425
(c) application by credential	500
<del>(b)</del> (d) jurisprudence reexamination ( <u>each retake</u> )	75
<del>(e)</del> (f) inactive renewal fee	100
<del>(d)</del> (e) active renewal fee	235
(e) temporary permit	200
(f) reciprocity	275

(2) through (4) remain the same.

AUTH: 37-1-131, 37-1-134, 37-9-304, MCA  
IMP: 37-1-131, 37-1-134, 37-1-141, 37-9-304, MCA

REASON: The board is amending this rule to increase efficiencies in application processing by providing the total fee for examination applicants who obtain a temporary practice permit, and those applying by credential. Additionally, the amendments will address confusion and questions by both department staff and license applicants. The board is not increasing any licensure fees, only combining those fees that are always charged to the applicants.

24.162.502 MILITARY TRAINING OR EXPERIENCE (1) and (2) remain the same.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a nursing home administrator. ~~At a minimum, satisfactory~~ Satisfactory evidence shall include:

(a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);

(b) through (4) remain the same.

AUTH: 37-1-145, MCA  
IMP: 37-1-145, MCA

REASON: The board is amending this rule to allow applicants to submit other discharge documentation in lieu of the DD 214 form. It came to the department's attention that certain military personnel (i.e., Reservists and National Guardsmen who have never been activated) do not receive a DD 214 form upon their discharge from the military. The amendment will clearly allow the board to consider other evidence of military discharge in lieu of a DD 214 form.

24.162.504 EXAMINATIONS (1) Each applicant ~~shall be required to~~ must attain a passing scaled score on the national examination, as determined by the National Association of Boards of Examiners for Nursing Home Administrators, ~~on an examination prepared by the Professional Examination Service, or the National Association of Boards.~~

(2) ~~In addition, each~~ Each applicant must attain a final score of at least 90% ~~in~~ on the open book jurisprudence examination relating to the provisions of the Montana long-term care facility licensing law and regulations.

~~(2) (3) In the event of failure, the individual~~ An applicant who fails an examination may retake the examination by after paying exam the examination fees referenced in ARM 24.162.420.

AUTH: 37-1-131, 37-1-134, ~~37-9-201~~, 37-9-203, 37-9-304, MCA

IMP: 37-1-131, 37-1-134, ~~37-9-201~~, 37-9-203, 37-9-301, ~~37-9-303~~, 37-9-304, MCA

REASON: The board is reorganizing this rule to address confusion by separately listing the national and jurisprudence examinations that are required for licensure. The board is further amending (1) to correctly identify the National Association of Board of Examiners for Nursing Home Administrators as the administrator of the board-approved national examination.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule, provide the complete sources of the board's rulemaking authority, and delete references to repealed statutes.

24.162.510 RECIPROCITY LICENSES LICENSURE BY CREDENTIAL (1) An application for licensure by reciprocity credential without examination must include a signed statement from the examining board of another jurisdiction attesting:

(a) that the applicant attained a passing scaled score, as determined by the National Association of Boards of Examiners for Nursing Home Administrators ~~on an examination prepared by the Professional Examination Service or the National Association of Boards;~~ and

(b) remains the same.

(2) An application for license by reciprocity credential may be filed at any time and must be accompanied by the required fees, which shall not be refunded.

(3) remains the same.

AUTH: 37-1-131, 37-9-203, MCA

IMP: 37-1-131, 37-1-304, 37-9-203, ~~37-9-301~~, MCA

REASON: The board determined it is reasonably necessary to amend this rule to utilize the correct terminology for licensing those with licenses in other jurisdictions. Because the board does not have reciprocal licensing agreements with any jurisdiction, the board will grant licensure by credential to individuals meeting the listed requirements. The actual requirements for licensure by endorsement are not changing.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.162.515 REQUIREMENTS FOR INACTIVE LICENSE NURSING HOME ADMINISTRATORS (1) A licensee is prohibited from practicing as a nursing home administrator while on inactive status.

(1) ~~(2)~~ Registered inactive Inactive licenses will be granted to those individuals presently licensed or eligible to be licensed as nursing home administrators, but who are not presently working in the nursing home administration field by submitting a request and paying the required fee.

~~(2)~~ (3) The requirements for obtaining a registered an inactive license status shall be the same as for obtaining a nursing home administrator's license, with the following exception:

~~(a)~~ the fee may be used as a credit towards the full fee for an administrator's license, at such time as application may be made during any license year for the administrator's license.

~~(3)~~ (4) Renewal of registered inactive nursing home licenses Inactive licensees shall utilize the renewal process and pay the required fee be accompanied with satisfactory evidence of completion of approved continuing education in the nursing home field for each calendar year.

(5) Inactive licensees shall be exempt from the continuing education (CE) requirements as set out in ARM 24.162.2105.

~~(4)~~ Applicants for an inactive nursing home administrator's license shall so indicate with the proper designation in the application for license which may be obtained from the board.

(6) To return to active status, inactive licensees must submit the following:

(a) a request and payment of the fee;

(i) At any time during the renewal period, the inactive license fee will be credited towards the full fee for an active license.

(b) verification of the licensee's good standing from every jurisdiction in which the licensee was licensed during the inactive period; and

(c) proof of completion of the required CE for the prior renewal period as set out in ARM 24.162.2105.

AUTH: 37-1-134, 37-1-319, 37-9-201, 37-9-203, MCA

IMP: 37-1-134, 37-1-319, 37-9-203, 37-9-304, 37-9-305, MCA

REASON: The board is amending this rule to remove terminology regarding registration and clarify the processes surrounding inactive status licensure and return to active status. The amendments will update to current, standardized

processes to include requesting inactive license status and paying any corresponding fees.

The amendments also remove the requirement for inactive licensees to complete continuing education while renewing as inactive. While acknowledging that inactive licensees may remain inactive for several renewal periods, the board concluded that requiring continuing education for the immediately previous licensing period when applying to return to active status will sufficiently protect the public.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.162.2105 CONTINUING EDUCATION (1) ~~All applicants for renewal of licenses and inactive registration shall have completed continuing education (CE) as a condition of renewal.~~

~~(2) Each active licensee must complete Twenty 20 hours of continuing education (CE) will be required annually for renewal of a license or renewal of an inactive registration.~~

(2) A licensee with an inactive license must complete 20 hours of CE for the immediately prior renewal period before requesting the board to issue an active license.

(3) through (8) remain the same.

~~(9) Up to ten hours earned in excess of 20 hours in a calendar year may be carried over into the succeeding year.~~

(10) through (12) remain the same but are renumbered (9) through (11).

AUTH: 37-1-131, 37-1-319, ~~37-9-201~~, 37-9-203, MCA

IMP: 37-1-306, 37-1-319, 37-9-203, MCA

REASON: The board is amending this rule to align with amendments to ARM 24.162.515 in this notice and remove the annual CE requirement for inactive licensees except when requesting to return to active status. Following this change, the board will audit only active licensees for CE compliance, while continuing to protect the public by requiring current CE before returning to active licensure.

The board is striking (9) to no longer allow carrying over of excess CE credits to subsequent years. The board determined that eliminating carryover CE credit is necessary to remedy issues with the timeliness and content of CE courses found by the board, and to simplify the requirements and reporting process for licensees.

Authority citations are being amended to provide the complete sources of the board's rulemaking authority.

4. The proposed new rule is as follows:

NEW RULE I NONROUTINE APPLICATIONS (1) Applications for active or inactive licensure that disclose any of the following circumstances are nonroutine and must be reviewed and approved by the board before the license may be issued:

(a) the applicant has a prior felony conviction;

(i) For purposes of this rule, "conviction" includes any disposition in a criminal case other than acquittal, without regard to the nature of the plea or whether the applicant received a suspended or deferred sentence;

(b) the applicant has pled guilty or no contest to, or has been convicted of two or more misdemeanors, other than minor traffic violations, within the past five years, regardless of whether an appeal is pending and regardless of whether the sentence was suspended or deferred;

(c) any of the applicant's occupational or professional licenses have been disciplined, or an application for a license was denied in this state, another state, or jurisdiction;

(d) the applicant has a pending or completed legal or disciplinary action involving licensure in this state, another state, or jurisdiction;

(e) the applicant has been a respondent in a complaint for unlicensed practice of nursing home administration in this state, another state, or jurisdiction that led to communication from the licensing authority to cease and desist or an injunctive action; or

(f) the application contains any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.

AUTH: 37-1-131, 37-9-203, 37-9-301, MCA

IMP: 37-1-101, 37-1-131, 37-9-203, 37-9-301, MCA

REASON: The board determined it is reasonably necessary to adopt NEW RULE I to further implement 37-1-101, MCA, which states the department will process routine licensure applications on behalf of the licensing boards. This new rule identifies criteria determined by the board to characterize nonroutine applications and therefore require board review and consideration for processing. Currently, the board reviews applications upon request of department licensing staff.

5. The rules proposed to be repealed are as follows:

24.162.401 QUORUM at ARM page 24-17051

AUTH: 37-9-201, MCA

IMP: 37-9-201, MCA

REASON: Current statutes already provide that a quorum is a majority of the board/panel members present to conduct business and that the ex-officio member is a nonvoting member. See 37-1-131(2) and 2-15-1735, MCA. The board is repealing this rule as unnecessary because it duplicates the statutes.

24.162.403 SUBMITTALS AND REQUESTS at ARM page 24-17051

AUTH: 37-9-201, MCA

IMP: 37-9-301, 37-9-302, 37-9-303, MCA

REASON: The board is repealing this rule as it conflicts with current statutes and standardized department processes. Public records requests are adequately addressed in Title 2, chapter 6, MCA, while applications, certificates, and documents are covered by 37-1-101, MCA. Additionally, this rule does not align with current processes as it prohibits electronic filing, posting, and license applications.

24.162.407 RECORD OF MINUTES AND HEARINGS at ARM page 24-17052

AUTH: 37-1-131, 37-9-201, MCA  
IMP: 37-9-201, MCA

REASON: It is the department's duty to maintain the official records per 37-1-101, MCA. The board is repealing this rule as unnecessary because the provisions are adequately addressed in statute.

24.162.408 APPLICATION DENIAL at ARM page 24-17052

AUTH: 37-9-201, MCA  
IMP: 37-9-305, 37-9-311, MCA

REASON: The board is repealing this rule as unnecessary because hearing requests are adequately addressed in statute at 37-1-309, MCA.

24.162.409 HEARINGS OR PROCEEDINGS at ARM page 24-17052

AUTH: 37-9-201, MCA  
IMP: 37-9-311, MCA

REASON: The board is repealing this rule as unnecessary because the provisions are adequately addressed in statute at 37-1-309, 37-1-310, and 37-1-311, MCA.

24.162.509 REINSTATEMENT at ARM page 24-17093

AUTH: 37-1-131, 37-9-201, 37-9-203, MCA  
IMP: 37-1-131, 37-9-201, 37-9-203, 37-9-305, MCA

REASON: Because section 37-1-141, MCA, adequately addresses reactivation of a license, the board is repealing this rule as unnecessary.

24.162.2101 RENEWALS at ARM page 24-17225

AUTH: 37-1-141, 37-9-201, MCA  
IMP: 37-1-141, 37-9-304, 37-9-305, MCA

REASON: The board is repealing this unnecessary rule because the department administers a standardized renewal process for all professional and occupational licensure boards, and this rule merely references the department rules on renewals.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Nursing Home Administrators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdnha@mt.gov](mailto:dlibsdnha@mt.gov), and must be received no later than 5:00 p.m., August 19, 2016.

7. An electronic copy of this notice of public hearing is available at [www.nha.mt.gov](http://www.nha.mt.gov) (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Nursing Home Administrators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdnha@mt.gov](mailto:dlibsdnha@mt.gov); or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.162.415, 24.162.420, 24.162.502, 24.162.504, 24.162.510, 24.162.515, and 24.162.2105 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rule I will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.162.401, 24.162.403, 24.162.407, 24.162.408,

24.162.409, 24.162.509, and 24.162.2101 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Nursing Home Administrators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; facsimile (406) 841-2305; or e-mail [dlibsdnha@mt.gov](mailto:dlibsdnha@mt.gov).

11. Linda Grief, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF NURSING HOME  
ADMINISTRATORS  
KATHRYN BEATY, BOARD CHAIR

/s/ DARCEE L. MOE  
Darcee L. Moe  
Rule Reviewer

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 11, 2016